IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 269-M of 2006 (O&M)

Date of decision : January 31, 2007

Sachinder Kaur

... Appellant

versus

Jasbir Singh

... Respondent

Coram: Hon'ble Mr. Justice Uma Nath Singh
Hon'ble Mr. Justice A.N. Jindal

Present: Mr. Gurcharan Singh, Advocate
for the appellant.

Ms. Harpreet Kaur Dhillon, Advocate
for the respondent.

A.N. Jindal, J.

This appeal is directed against the order dated 11.5.2005 vide which the appellant was proceeded against ex-parte and the judgment and decree dated 22.7.2005 passed by Additional District Judge, Ludhiana whereby ex-parte decree of divorce was passed against the appellant.

Factual matrix, in the background of the case, is that in an application under Section 13 of the Hindu Marriage Act, for seeking a divorce against the appellant, she appeared in the court, claimed maintenance pendentilite under Section 24 of the Act which was allowed vide order dated 5.3.2005 @ Rs.4000/- per month and also litigation expenses to the tune of Rs.5,000/- in lump sum. However, on 11.5.2005, she was proceeded against ex-parte and ultimately after recording ex-parte evidence, Additional District Judge, Ludhiana allowed the application and dissolved the marriage between the parties on the ground of cruelty.

On 22.8.2005, appellant moved an application for setting aside ex-parte decree which was also dismissed on 16th October, 2006 by Additional District Judge, Ludhiana. The plea taken by the appellant is that absence of the appellant on 11.5.2005 was not intentional. She never

missed to appear in the Court on the adjourned hearings. She was not conveyed the correct date by her counsel and she was told that the case was adjourned from 11.5.2005 to 3.6.2005 and thereafter for 13.8.2005. Thus, she has challenged the order vide which she was proceeded against ex-parte and the judgment and decree dated 22.7.2005 as well as order dismissing the application dated 16.10.2006 for setting aside the ex-parte decree.

We have heard learned counsel for the parties and perused the records of this case.

The appellant has contended that she was awarded maintenance @ Rs.4,000/- per month from the date of application vide order dated 5.3.2005 and litigation expenses to the tune of Rs.5,000/- which was not paid by the respondent on 11.5.2005, when she was proceeded against ex-parte and also on the adjourned date i.e. 3.6.2005, therefore, the appellant was not going to be benefitted in any manner by absenting herself on the next adjourned date of hearing as she was to receive at least Rs.65,000/- on account of maintenance and litigation expenses. When on the adjourned date i.e. 13th August, 2005 she appeared in the Court, she came to know that ex-parte decree of divorce has already been passed against her on 22.7.2005, therefore, she moved an application for setting aside ex-parte decree within limitations i.e. within 30 days i.e. on 22.8.2005.

On the other hand, the respondent urged that since the appellant herself absented from the Court proceedings, therefore, she cannot get benefit out of her own wrong. She has not come with clean hands. The application is false and frivolous, therefore, the trial Court was right in declining the application for setting aside the ex-parte decree and decreeing the application under Section 13 of the Act in his favour.

Having perused the rival contentions and records of the case, it transpires that the petition for dissolution of marriage was preferred by the respondent on 30th April, 2004 and since then she was attending Court continuously and maintenance order was passed in her favour. Despite the fact that the maintenance was not paid by the respondent, she continued attending hearings up to 11.5.2005 but to the utter surprise, it does not appeal to reason that the appellant will absent herself when she was waiting that the arrears of maintenance (i.e. Rs.65,000/-) were to be paid to her on a

future date. Therefore, explanation regarding her absence on 3.6.2005 seems to be reasonable and is sufficient ground which prevented herself from appearing in the Court on the adjourned date of hearing and when she appeared on the date given to her by her counsel i.e. 13.8.2005 she came to know about the ex-parte decree and she immediately filed the application for setting aside ex-parte decree within 9 days of her knowledge. There are serious allegations levelled by the husband against the wife which went unheard due to misunderstanding given to the appellant about the date.

We do not agree with the contentions as raised by the respondent that the negligence on the part of the appellant was coetaneous or intentional. Keeping in view the atrocities being committed on the fair sex by way of mangy tactics because of the various reasons in our society, the law with regard to setting aside of the ex-parte decrees obtained by the husbands through evil designs has been construed liberally. This Court while dealing with such matter, while taking liberal view of the sufficient cause observed in case ***Smt. Suresh Devi vs. Babu Ram, 1988(1) PLR 286*** as under :-

> "*It may be observed that matrimonial matters are on different footings than the ordinary litigation between the parties. The very fact that serious allegations were made by the husband against the wife in the petition under Section 12 of the Hindu Marriage Act, was itself a ground to set aside the ex-parte decree so that the wife may have a chance to controvert the allegations made against her. Moreover, nothing has been brought on the record by the husband to prove that the wife had any interest to delay the proceedings or had gained in any manner by allowing the husband to proceed ex-parte against her. Moreover, the husband never produced the postman in the witness box to prove his report of refusal.*"

In this case also, on our repeated query, the respondent has failed to show if the wife had any interest in absenting herself intentionally or abstaining from the proceedings regarding dissolution of marriage. Since she was to receive huge amount on account of maintenance, therefore, there was no reason for her to withhold herself from the Court. The only

argument that now the husband has re-married, therefore, setting aside ex-parte proceedings will create hardship is of no consequence. The husband appears to have not waited even the expiry of the period of limitation for filing the appeal and hurriedly tried to exploit the ex-parte decree obtained by him. As such, this order shall follow the event. Since the appellant has been successful in proving that she was prevented by sufficient cause from appearing in the Court when the case was called for hearing, therefore, the Court was not powerless in setting aside the ex-parte decree passed against the appellant. It will also be pertinent to mention here that the case was just at the stage of reconciliation. The trial Court appears to have acted in hurried manner and it decided the petitions without appreciation of evidence led ex-parte by the respondent and reached the conclusion on whimsical grounds. Testimony of the witness namely Inder Singh (PW2) as examined by the respondent have also not properly been discussed.

Consequently, we accept the appeal and set aside the impugned judgment dated 22.7.2005.

C. Misc. No.158-M of 2006

Since the main appeal has been disposed of finally, no order is warranted in C. Misc. No.158-M of 2006.

The parties are directed to appear before the trial Court on 13.3.2007.

(Uma Nath Singh)
Judge

(A.N. Jindal)
Judge

January 31, 2007
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